STATE OF MICHIGAN

COURT OF APPEALS

DENISE M. PECHMAN, Plaintiff-Appellee,	UNPUBLISHED April 26, 2005
v	No. 255177 Genesee Circuit Court
MARK L. PECHMAN, Defendant-Appellant.	LC No. 00-223497-DM

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying his motion for a change in custody and for a change in domicile. We affirm.

I. Material Facts and Proceedings

Plaintiff and defendant were married in October 1988, and had two minor children. On December 14, 2001, a consent judgment of divorce was entered, awarding sole physical custody of the minor children to plaintiff, along with joint legal custody. Defendant subsequently filed a motion for change of custody, contending there had been a change of circumstances. Defendant requested permanent physical and legal custody of the minor children. Following an extensive evidentiary hearing, the trial court denied defendant's motion.

II. Standard of Review

This Court applies three standards of review in custody cases. *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004). First, this Court applies the great weight of the evidence standard to all findings of fact. *Id.* "A trial court's findings regarding the existence of an established custodial environment and regarding each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction." *Id.* Second, an abuse of discretion standard applies to the trial court's discretionary rulings, such as custody decisions. *Id.* Finally, questions of law are reviewed for clear legal error. *Id.* "A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law." *Id.*

III. Analysis

Defendant first argues that the trial court erred in denying his motion to modify physical custody and the domicile of the children because it failed to consider the testimony of Dr. Buffalin and the children. We disagree.[1]

Defendant contends that the trial court did not consider evidence of plaintiff's "emotional instability and mistreatment of the children or the children's fears in staying with" plaintiff. Defendant maintains that the trial court's findings were against the great weight of the evidence because it did not consider the children's testimony or that of Dr. Diane Buffalin regarding the "violent, harassing and unstable environment the children had to live under when living with [plaintiff]." We find that the trial court's findings were not against the great weight of the evidence.

Regarding factor (f) (moral fitness of the parties), MCL 722.23(f), defendant merely states that the trial court found this factor favored plaintiff, without "discussing any of the problems which were testified to over the vast majority of the trial."

> To evaluate parental fitness, courts must look to the parent-child relationship and the effect that the conduct at issue will have on that relationship. Thus, the question under factor f is *not* "who is the morally superior adult;" the question concerns the parties' relative fitness to provide for their child, given the moral disposition of each party as demonstrated by individual conduct. We hold that in making that finding, questionable conduct is relevant to factor f only if it is a type of conduct that necessarily has a significant influence on how one will function *as a parent*. [*Fletcher v Fletcher*, 447 Mich 871, 887; 526 NW2d 889 (1994) (emphasis in original).]

Regarding factor (g) (mental and physical health of the parties), MCL 722.23(g), defendant again contends that the trial court ignored the testimony demonstrating plaintiff's "emotional instability."

Regarding factor (g), Dr. Laurn Kavanaugh-Wallace, plaintiff's and the children's familial psychologist, testified that there was no indication that plaintiff had an anger management problem, that the children were afraid of plaintiff, or that there was any reason to remove the children from plaintiff's custody. Additionally, plaintiff testified that she had not been diagnosed with a hormonal imbalance or that it was suggested that she take any sort of medication. With respect to factor (f), defendant's argument again focuses on plaintiff's mental state; however, there is no correlation between plaintiff's mental state and her moral fitness. Thus, the trial court's findings were not against the great weight of the evidence with respect to factors (f) and (g).

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[1] The parties do not dispute that an established custodial environment existed, or that defendant was required to prove a change of circumstances by clear and convincing evidence. See MCL 722.27(1)(c).

Regarding factor (j) (facilitation of relationship with other parent), MCL 722.23(j), defendant argues that the trial court ignored evidence that plaintiff blocked the children's ability to communicate with defendant. With respect to this factor, the trial court determined that the parties were equal. Although there was evidence to support defendant's assertion that plaintiff removed the children's telephone access by removing the cell phone defendant gave them and by listening to their telephone conversations, there was also evidence that defendant disconnected plaintiff's calls to the children. Additionally, there was evidence that plaintiff did not get her phone calls returned when the children were with defendant. Accordingly, we cannot conclude that the trial court's findings were against the great weight of the evidence with respect to this factor.

Regarding factor (k) (domestic violence), MCL 722.23(k), defendant states that the trial court's finding that some of the problems between plaintiff and the children (such as the cell phone problem) were caused by defendant "makes no sense." Defendant fails to explain this argument in any way. "'A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim.'" *Korth v Korth*, 256 Mich App 286, 294; 662 NW2d 111 (2003) (citation omitted). Thus, defendant has waived this sub-issue on appeal. *Id*.

Defendant further indicates that the trial court ignored the lack of physical or relationship problems between he and the children, and that plaintiff was severely mistreating the children on a physical and emotional level. The trial court acknowledged that there had been problems between plaintiff and the children, but did not find that they rose to the level of domestic violence. Defendant failed to elaborate further on this argument, and again, has waived this issue on appeal. *Korth*, *supra*. Accordingly, we conclude that the trial court's findings were not against the great weight of the evidence.[2]

Defendant further contends that the trial court erred because it failed to adequately consider the children's preference. We disagree.

Although defendant concedes that the trial court acknowledged that it was aware of the children's preference, defendant argues that the trial court did not consider the preference in its decision, and did not discuss the rationale behind the children's preference. One of the twelve best interest factors a trial judge must consider is the "reasonable preference of the child, if the court considers the child to be of sufficient age to express preference." MCL 722.23(i). "The child's preference does not automatically outweigh the other factors, but is only one element evaluated to determine the best interests of the child." *Treutle v Treutle*, 197 Mich App 690, 694-695; 495 NW2d 836 (1992).

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[2] Defendant briefly mentions that the trial court "seems" to ignore evidence that the home environment at plaintiff's home caused problems at school, particularly referring to the parties' minor son's grades. However, there was evidence indicating that both children had been improving in school. There was also evidence from the school counselor that the minor son reported that part of his problem was the academic load. Thus, there was ample evidence countering defendant's argument.

Here, the children each expressed their preference, which was to live with defendant. However, contrary to defendant's argument, the trial court specifically addressed this factor, noting the children's preference, but also indicating the preference was not necessarily reasonable in that the children did not have a daily routine with defendant as they have with plaintiff. As previously stated, the children's preference does not automatically outweigh the other factors. *Treutle, supra*. As this is but one of the elements to be evaluated in determining the best interests of the child, the trial court properly considered each of the twelve best interest factors in rendering its decision.

Next, defendant argues that the trial court failed to properly consider the best interests of the children in denying his motion for a change of custody and domicile. We disagree.

Defendant concedes that the trial court addressed the twelve best interest factors, MCL 722.23, but contends that the trial court failed to apply the evidence of record to each of the subsections. Defendant maintains that the trial court failed to properly consider the testimony of the children, Dr. Buffalin, Connie Nash, and Patricia Coscia. However, the trial court is not required to address every fact in evidence or voice its conclusion concerning every argument presented. *LaFleche v Ybarra*, 242 Mich App 692, 700; 619 NW2d 738 (2000). The trial court properly addressed each of the twelve best interest factors in rendering its decision. Accordingly, defendant has failed to demonstrate that the trial court erred with respect to its findings on the twelve best interest factors.

Lastly, defendant argues that the trial court erred in awarding full legal custody of the children to plaintiff. We disagree.

Defendant contends that the trial court failed to supply its reasons on the record for modifying the custody order to provide plaintiff with sole legal custody. Pursuant to MCL 722.26(1), the trial court shall, at the request of either parent, consider an award of joint custody. The reasons for granting or denying such a request must be stated on the record. MCL 722.26(1). In awarding plaintiff physical and legal custody of the minor children, the trial court indicated that the parties had problems communicating, and that the parties were incapable of having joint legal custody. The trial court cited examples of typical communication problems between the parties, including plaintiff not calling defendant, defendant not providing plaintiff with his schedule, and "not knowing where the kids are going." Accordingly, the trial court provided its reasons on the record in accordance with the statute.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell